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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/581,412	06/12/00	SCHNEIDER	G BEIERSDORF6

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HM12/0223

EXAMINER

YU, G

ART UNIT	PAPER NUMBER
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1619

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DATE MAILED:

02/23/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.

09/581,412

Applicant(s)

SCHNEIDER ET AL.

Examiner

Gina C Yu

Art Unit

1619

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on 7-25-00
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 2-5 are rejected because, while the claims merely state the intended use, they lack the necessary method steps showing how the methods may be carried out.

Claims 3-9 are rejected because the claims contain vague and indefinite terms or phrases which render the claims indefinite. The phrases "in particular", "particularly preferably" and "preferably" are vague and indefinite because it is unclear whether the limitations mentioned before the phrase and term are also part of the claimed invention.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation

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under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dahms et al. (U.S. Pat. No. 5,744,062).

Dahms et al. disclose method to formulate oil-in-water emulsifier blends for stable oil-in-water emulsions. The reference teaches steps to formulate co-emulsifiers which forms liquid crystalline gel network structure and thereby stabilizes the emulsion. See col. 1, line 6 – col. 20, line 44; Figure 6A. The references also cites well-known cosmetic coemulsifiers glyceryl stearate citrate, sorbitan stearate, and cetearyl alcohol, which meets components (I), (II), and (III) in claims 1-3 and claim 10. See col. 5, line 33 – col. 6, line 27. The reference lacks an explicit teaching of using electrolytes and the amount of each component which may be used in the invention.

Dahms et al. teach using primary emulsifiers with alkali metal, alkaline earth metal, ammonium, or a substituted ammonium group having one or more C1 to C3 alkyl or hydroxyalkyl groups. See col. 6, line 28 – col. 7, line 32. It is examiner's position that these primary emulsifiers, when dissolved in aqueous solution, will be the source of electrolytes, which meets claim 1-3.

Dahms et al. further teach that, in the process of the preparation of the emulsion, the amount of coemulsifier in the O/W emulsion depends on the type of the carrier, and that the choice of coemulsifier is determined by formulator preference, cost or physical

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properties of the coemulsifiers. See col. 9, line 41 – col. 20, line 44. The reference further teaches that the ratio of the primary emulsifier, which examiner takes to be the source of electrolytes, and the co-emulsifier, is balanced to achieve maximum swelling of the water gap in the liquid crystals. See col. 12, line 45 – col. 13, line 15.

It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the composition in Dahms et al. as suggested by their teaching because of the expectation to produce a stable emulsifier blends.

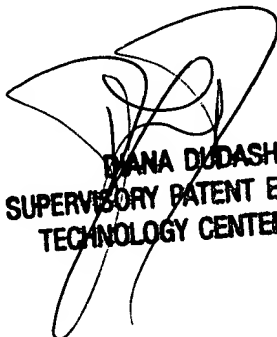
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Schneider et al. (U.S. Pat. No. 5,780,445).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 703-305-3593.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diana Dudash can be reached on 703-308-2328. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4242 for regular communications and 703-308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.

Gina C. Yu  
February 20, 2001

  
DIANA DUDASH  
SUPERVISORY PATENT EXAMINER  
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